Supreme Court of the United States.

OCTOBER TERM, A. D. 1888.

No. 1160.

JOHN ROACH ET AL., PLAINTIFFS,

vs.

JOSEPH NEVIN ET AL., DEFENDANTS.

ERROR TO KENTUCKY COURT OF APPEALS.

The defendants in error, Joseph Nevin and Samuel B. Richardson, submit that the plaintiffs in error, John G. Roach, Julius Winter, Fred. Jansen, Gabriel L. Spink, Andrew McDonald, and his wife, Jane McDonald, have sued out from this Court their writ of error to the Kentucky court of appeals for the purpose of having this Court review and reverse a judgment of that court in an action commenced by the defendants in error in the Louisville chancery court to enforce a lien given by a statute of the State of Kentucky, approved March 24, 1882, entitled "An act to amend the charter of the city of Louisville," and by which act it was, among other things, provided that all of the public ways of the State in the city of Louisville should be under the exclusive management and control of the general council of that city, with a power in the general council to improve them by original construction in such manner and of such material as might be provided by an ordinance of the gen-

eral council; that in all cases where the territory contiguous to any public way sought to be improved by original construction is not defined into squares by principal streets it is provided in the act that the ordinance providing for the improvement, by original construction, of such public ways shall state and fix the depth on both sides of such public way fronting the proposed improvement, to be assessed for the cost of making the same according to the number of square feet owned by the parties, respectively, within the depth set out in and limits fixed by the ordinance providing for the improvement, and when any such improvements have been completed it is made the duty of the city engineer to give notice in some newspaper printed and published daily in the city of Louisville of the time when and place where he will try and determine whether such improvement as made conforms to the ordinance and contract therefor, and under the act in question every person who owns land within the fixed limits subject to assessment to pay the cost of such improvement is given the right to appear before such engineer in person, by agent or attorney, at the time and place specified in the notice, and may be heard as to whether such improvement as made conforms to the ordinance and contract therefor; that upon the completion, inspection, and trial by the city engineer and acceptance by the city of the improvement by original construction of such public ways it is made the duty of such general council to apportion the cost of such improvement in the manner before stated, and it is made the duty of the clerk of the board of councilmen to issue and deliver to the person making such improvement and in payment therefor warrants against the persons named in and for the amount fixed by the apportionment of the cost as made by the general council; and by the act in question it is further enacted that a lien shall exist for the cost of such improvement for the apportionment and interest thereon at the rate of 6 per cent. per annum against the respective lots, and payment may be

enforced upon the property bound therefor by proceedings in courts, and no error in the proceedings of the general council shall exempt from payment after the work has been done as required by either the ordinance or contract, but the general council or the courts in which suits may be pending shall make all corrections, rules, and orders to do justice to all parties concerned.

Under the provisions of this act the general council procured the improvement by original construction of Broadway from Twenty-sixth street westwardly to the western limits of the city, a distance of eight hundred feet. The streets named are public ways of the State and within the city of Louisville, and between the points named the territory contiguous to Broadway was on neither side defined into squares by principal streets, but the ordinance providing for the improvement fixed the depth on each side to be assessed to pay the cost of the improvement. Each of the plaintiffs in error owned lands within the tax limits as fixed by the local ordinance subject to assessment to pay the cost of the improvement by original construction of Broadway between Twenty-sixth street and the western limits of the city. The improvement by original construction of Broadway between the points designated was completed and made by the defendant in error, Joseph Nevin, under an ordinance of and contract with the city of Louisville, and was, after its completion and after notice given as required by the act, inspected by the city engineer, who decided that the improvement had been made in accordance with the ordinance authorizing the same and the contract therefor, and was accepted by the city of Louisville. The general council thereupon apportioned the cost, ascertained the number of square feet owned by each person within the taxable limits, the sum total of the cost, and the share of each person, and among others apportioned against each of the plaintiffs in error their respective shares of this cost as determined by the number of square feet owned by them, re-

spectively, within the tax limits as defined by the local ordinance, and for those respective sums and against those respective parties the clerk of the board of councilmen issued apportionment warrants, which he delivered to the defendant in error, Joseph Nevin, in payment for the improvement, and among other warrants against the plaintiffs in error for their proportion of the cost as fixed by the apportionment of the general council.

The defendant in error, Joseph Nevin, made an equitable assignment of the warrants against the plaintiffs in error to the defendant in error, Samuel B. Richardson, and to enforce the lien given by the statute to secure the payment of these warrants this action was commenced in the Louisville chancery court. The plaintiffs in error were duly summoned. Each appeared and filed their answer, setting up numerous defences, and, among others, one that the act in question and all proceedings had under it were in conflict with the first section of article fourteen of the amendments to the Constitution of the United States. Upon issues made in the Louisville chancery court the action was submitted, heard and decided, and while the chancellor decided that the act was general and applied to all alike, and therefore did not deny equal protection, and while the tax or assessment could only be enforced in the regular course of judicial proceedings on notice and with a full opportunity for a hearing on the part of those taxed or assessed, and was therefore due process of law, yet it was the opinion of the chancellor that the improvement as made did not conform to the ordinance or contract therefor, and for this reason the chancellor dismissed the petition. On appeal to the Kentucky court of appeals that court ruled that the improvement as made did conform to the ordinance and contract therefor, reversed the judgment of the chancellor, and remanded the action with directions to the chancellor to render a judgment as prayed for in the petition of the defendants in error.

The Kentucky court of appeals did not notice in their opinion nor pass upon the Federal question raised in the answer of the plaintiffs in error. The plaintiffs in error, on the assumption that the act in question and the proceedings under it as set out deprive or will operate to deprive them of their property without due process of law and denies to them the equal protection of the laws of Kentucky, have sued out the present writ to the Kentucky court of appeals to have the judgment of that court reviewed and reversed by this tribunal; and, while conceding a technical jurisdiction in this Court, the defendants in error conceive that the writ was sued out for the mere purpose of delay, and that the question upon which the jurisdiction of this Court depends is too frivolous to require any argument; and they now, on a notice filed, move this Court to dismiss the writ for want of jurisdiction in this Court to try it, and they move the Court to affirm the judgment of the Kentucky court of appeals, because it is manifest the writ was sued out for the purpose of delay merely and because the question upon which the jurisdiction of this Court depends is too frivolous to require argument.

J. K. Goodloe,
Att'y for Defendants in Error.

Supreme Court of the United States.

OCTOBER TERM, 1888.

No. 1160.

JOHN G. ROACH, ET AL., PLAINTIFFS IN ERROR,

vs.

JOSEPH NEVIN, ET AL., DEFENDANTS IN ERROR.

The plaintiffs in error object to the hearing of the motion of defendants in error to dismiss and affirm until after the record is printed.

B. F. BUCKNER,
For Plaintiffs in Error.

SUPREME COURT OF THE UNITED STATES.

JOHN G. ROACH, *et al.*, Plaintiffs in Error,

vs.

JOSEPH NEVIN, *et al.*, Defendants in Error.

Affidavit.

B. F. Buckner, having sworn, says that he is attorney for the plaintiffs in error, and that he verily believes that it will be necessary to a correct understanding and decision of the questions involved in the motion of the defendants in

error to dismiss and affirm, (of the making of which on November 26th, 1888, he has received notice), that the entire record should be printed. That he is advised and believes that it is the duty of the defendants in error, under the practice of this Court, to cause the record to be printed in cases of motions to dismiss or affirm made before the case is regularly reached on the docket, and that it will be inconvenient and laborious to prepare a brief without a printed copy of the record.

B. F. BUCKNER.

Subscribed and sworn to by B. F. Buckner, before me, a notary public for Jefferson county, Kentucky, this 19th day of November, 1888.

Witness my hand and notarial seal.

[SEAL.] A. W. KEATING,
N. P., J. C., Ky.

Endorsed: Sup. Court U. S. 1888. Oct. Term. No. 1160. Jno. G. Roach, *et al.*, pl'ffs in error, *vs.* Joseph Nevin *et al.* Objection by pl'ffs in error to trial of motion to dismiss without printed record, with affidavit. Filed Nov. 21, 1888.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1888.

No. 1160.

JOHN G. ROACH *et al.*, PLAINTIFFS,

vs.

JOSEPH NEVIN *et al.*, DEFENDANTS.

ERROR TO THE KENTUCKY COURT OF APPEALS.

The plaintiffs in error, John G. Roach, Julius Winter, Fred. Jansen, Gabriel L. Spink, Andrew McDonald, and Jane McDonald, will take notice that upon the 26th of November, 1888, and at as early an hour on said day and date as the same can be made and entered, the defendants in error, Joseph Nevin and Samuel B. Richardson, will move the Supreme Court of the United States to dismiss for want of jurisdiction the writ of error upon which the above-entitled cause is now pending in said court, and will at the same time move the Supreme Court of the United States to affirm the judgment sought to be reviewed by said writ on the ground that although the record of the above-entitled cause may show that the Supreme Court of the United

States has jurisdiction, yet it is manifest that the writ of error was sued out for delay only and that the question upon which such jurisdiction depends is so frivolous as not to need further argument.

J. K. GOODLOE,
Attorney for Defendants in Error.

The plaintiffs in error have been served with a copy of the above notice and with a printed copy of the argument of defendants in error for more than three weeks prior to November the 26th, A. D. 1888.

B. F. BUCKNER,
Attorney for Plaintiffs in Error.

Supreme Court of the United States.

OCTOBER TERM, A. D. 1888.

No. 1160.

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Supreme Court of the United States.

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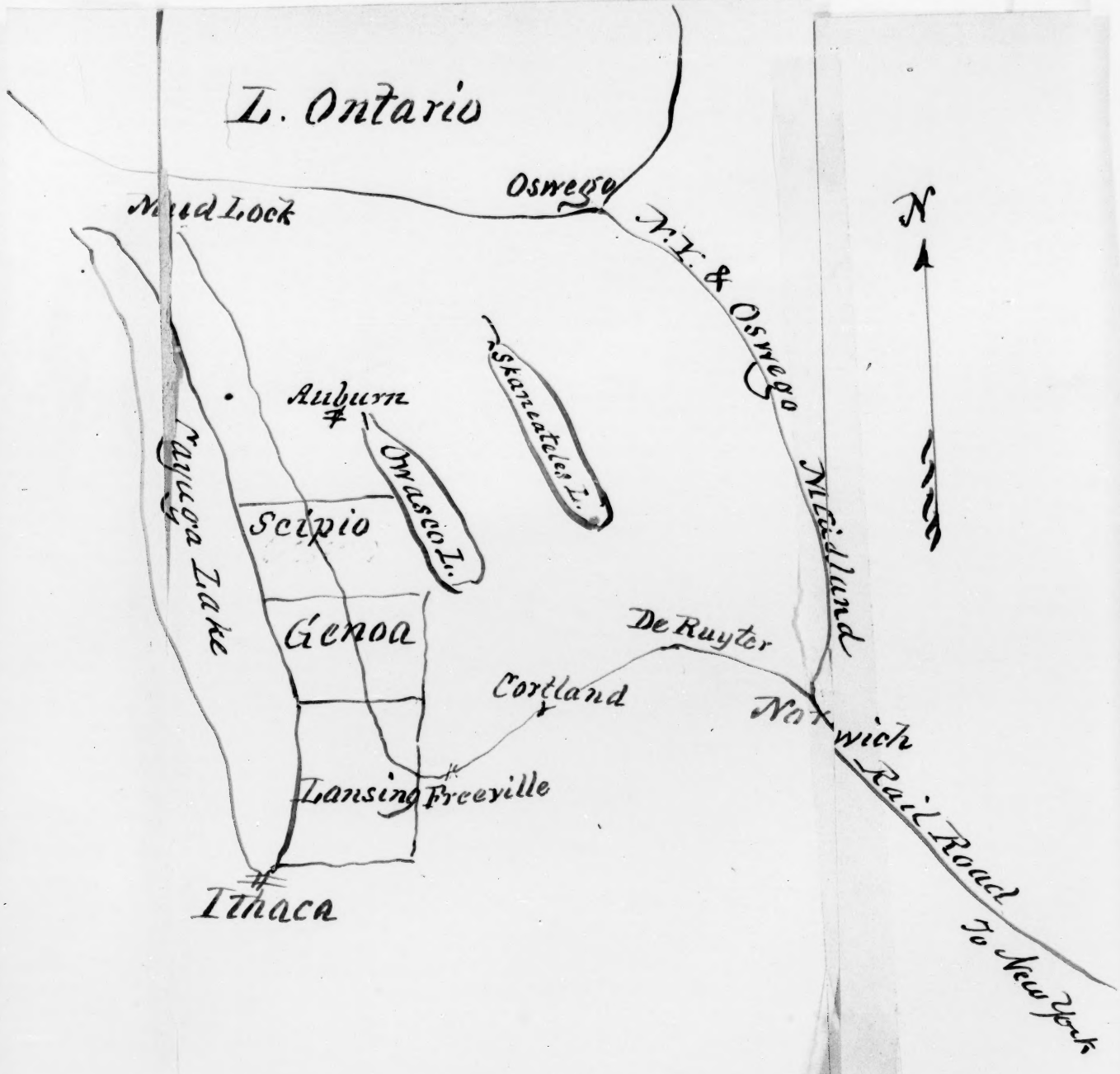
B. F. BUCKNER,
Attorney for Plaintiffs in Error.


L. Ontario
Oswego
Mud Lock
N.Y. & Oswego Midland
N
Auburn
Skaneateles L.
Owasco L.
Cayuga Lake
Scipio
Genoa
De Ruyter
Cortland
Norwich Rail Road
To New York
Lansing
Freeville
Ithaca

58a

The lands in this Township were offered at public sale on the 3d Monday Nov. 1823

Surveyed in the Year 1844 Platted & the Notes thereof returned to the Office of the Surveyor Gen'l at St. Louis 16. 12. 94. 145. 161. 348. & 150. on Letter of the Surv. Gen'l. 6. 7. Stand Office of the Surv. Gen'l 28th Sept. 1844

Fractional Township No 45 North. Range No 7 East of 5th Principal Meridian

Surveyors Office St Louis 25th April 1844

The plat of Survey No 3052 of 80 arpens confirmed to Charles Roy in his legal right by the U.S. of Congress of the 4th July 1836 under Private No 103 (1st class) of the board of Commissioners is strictly conformable to the field notes of the survey thereof on file in this office which have been examined and approved. The residue of Chas Roy was surveyed by Isaac Woods in December 1837 and July 1839 under instructions from this Office of the 21st of November 1837. The surveying amounting to 3 miles 3.64 chains around the tract 48.29 &c. the connections with the adjacent private surveys was paid for in the 1st of December 1840 Sur Voucher No 3 of the 4th quarter of that year

Surveyor Office St Louis Dec 4th 1835

Sub divided the South fractional halves of Sections 25 & 26 T 45 N R 7 E on an island, by a East and West line to be run at right angles to the line between said sections 25 and 26 and to come at a point 11 chains and 22 links South, to the quarter section corner thereon, in order to make up with fractional section 24 and N.E. fractional quarter of Section 26 and N.W. fractional quarter of Section 25 the quantity of 160 acres, to which Robert Duncan is entitled by right of Pre emption under the act of Congress of the 19th of June 1834 as appears by the letter of the Register of the Land Office at St. Louis dated this day

E. F. Leyburn

a copy of C. Roys Survey No 3052 sent to the Com'r Register on 5th April 1844

Surveyor of the Public lands in the States of Illinois & Missouri

No 422 August Dozier 200 arpens

No 458 Jacques Clamorgan under Peter A. Bryan 400 arpens equal

No 2041 C.B. Perrosse under G. Cerre 400 arpens equal 340 72/100 A.

John Watkins 760.00 equal to 428 32/100 acres

Certificate No 94 Peter Nelson or Representatives 640 acres N.M. No 2677

Certificate No 319 Baptiste Lafferre 640 acres N.M.

No S. 2614

No 378

Marie Louise Chouteau Papin 3200 arpens equal 2722 72/100 A.

Certificate No 105

Martin County or Representatives 640 acres

No 2441

Certificate No 103 Eustache Potter No 2472 160 acres N.M.

No 1362 Lewis Bragaau 470 arpens equal 329 63/100 A.

Rock Branch Creek

Mississippi River

No. 964 Glasgow &c. v. Baker et al. } b. 58.

No 2037

Charles Gratiott 6720 arpens equal 5th 716 72/100 acres

No 363 Augustin Chouteau 1031 arpens under Laclede Bequest as altered

Certificate No 358 160 acres

Certificate No 43 82.50

Certificate No 150 James V. O Connell or Representatives 640 acres

Certificate No 330

Charles Sanguinet 457 arpents = 388 72/100 acres

No 2043

Charles Gratiott 700 arpens = 594 72/100 A.

Survey 3217

Henry Duchouquet

No 2623

St. Louis Common

Common Field of Carondelet

Joseph Brazeau 160 arpens = 85 acres

Sec. 26 26.67 acres

Sec. 25 50.89 acres

Island 54.48 A. 64.96 A.

Illegible

Surveyor Office St. Louis Nov. 30th 1835. This day laid down on this plat Fol. Sec. 24. 25. 26 T 45 R 7 E. being an Island in the Mississippi River - Surveyed by Joseph C. Brown, Deputy Surveyor on the 23d of September of the present Month.

E. F. Leyburn.

Note: The Commissioner of the General Land Office in their letter of the 8th Sept. on the subject of the claim of Augustin Chouteau under Laclede Bequest says "I can perceive no cause for a different survey being made in 1817 as now exhibited on Township plat but must consider the lines specified in the patent as forming the boundaries of the confirmation." This not known in this Office what are the lines specified in the patent consequently it can not be known what are the bounds of Chouteaus claim until the lines be returned in the patent are furnished January 18th 1825

Surveyor Office St. Louis April 8th 1837

Surveys No 1464 - 2973 laid down on this plat to day according to the field notes of the survey thereof in both of Survey's No 123

Pursuant to a contract with, and instructions from the Rector Surveyor of the Lands of the United States in the Territories of Illinois & Missouri bearing date thirtieth first day of March Eighteen hundred and seventeen, I have admeasured, laid out and surveyed the above described Township, and do hereby certify that I have landmarked and bounded both natural and artificial as are represented on said plat and described in the field notes made thereof and returned with the Plat to the Office of the Surveyor of the Lands of the United States for the Territories of Illinois and Missouri

(Signature illegible)

State of Missouri
Office Register of Lands

I Robert McCulloch Register of Lands for the State of Missouri do hereby certify the above and foregoing to be a correct copy of the plat of Survey of Tp. 45 N. R. 7 E. as the same appears of Record on page 71 Vol. 3 of Missouri Plats in my Office. And I further certify that the distances, courses and names of confirmations, which appear to have been omitted on the above Plat were so defaced as to be illegible and could not be made out, and I also further certify that the places on said Plat where the words and figures are illegible are designated by this mark x.

In testimony whereof I have hereunto set my hand and affixed the seal of said Office at the City of Jefferson this 9th day of May 1882

Robt McCulloch
Register of Lands

Seal of Register of Lands Missouri

[redacted]

61a

61

Map X

No. 964.
Glasgow &c.
v.
Baker et al.
} p61.

Note.

Under the instructions of the Commissioners of the
the fourteenths of land marked A on our plat and of which
the surveys are numbered 3196. 3197. 3603 and 3193. respectively have been designated and set apart
to the town or city of St Louis for the support of Schools therein, in
conformity with the second Section of the act of Congress of approved the
26th of May 1824 entitled an act supplementary to an Act passed on the
13th day of June 1812 entitled an Act making further provision for
selling the claims to land in the Territory of Missouri and under
the instructions and laws aforesaid the seven tracts marked B will also be
designated and set apart for the same purpose

William Milburn
Surveyor of the Lands of the U. S.
in Illinois
and Missouri

Grand Prairie

Cul de Sac

Survey No 363 Hyacinthe Chouteau under Labadie Legal reps & others

ON THE 13

Survey No 2123 James Mackey et al's legal reps

Survey No 3184 Mary Hebert de Bois

Survey No 3124 Antoine Soudard et al's legal reps

Survey No 3078 Joseph Brazeau et al's legal reps

Survey No 3186 Silvester Labadie et al's legal reps

Survey No 3123 Joseph Brazeau et al's legal reps

Survey No 3122 Joseph Brazeau et al's legal reps

Survey No 2297 Louis Labadie

A Survey No 4063

Survey No 631

Rue's Mill

Cherry Street
Oak Street
Green Street.

Commons of St. Louis

Prairies des Noyer

Little Prairie

INCORPORATED

ST. LOUIS AS IT

Carondelet Common Field

Line between T 44 & 45 N R. 7 East 5th M

Town of Carondelet

Variation 8° E
Scale 20 chains to an inch

copy of this plat was sent to the Commissioners on the 4th August 1859

Description beginning at a corner marked A which is the upper corner of the Common Field of St Louis on the right bank of the Mississippi River. Thence N 78 E 24 with the north boundary of the said Common Field 118 chains and 50 Links to the northwest corner thereof marked B Thence S 28° 30 E. 15 chains and 40 Links to the corner marked C. Thence S 45 6. 111 chains and 62 links to the corner marked D. Thence S 25° 30 W 38 links to the corner marked E. at the intersection of the West boundary of the Common Field with the north boundary of the town of St Louis as it stood incorporated on the 13 day of June 1812. Thence west with said north boundary 38 chains and 45 Links to the corner marked F. which is the northwest corner of the town as it stood incorporated on the said 13th day of June 1812 Thence south 26° 30 W. 73 chains and 72 links to the corner marked G. at the intersection of the Western boundary line of the town of St Louis as it stood incorporated on the 13th day of June 1812 with the north boundary line of the Common of St Louis. Thence north 75 W. 65 chains and 77 links to the N.W. corner of the St Louis Common marked H. Thence south 42 minutes of a degree East 162 chains and 72 links to the corner marked I. Thence S 2° 45 East 4 chains and 5 links to the corner marked K. Thence S 15 W 9 chains to the corner marked L. Thence N 82. 45 W 9 chains and 5 links to the corner marked M. Thence S. 70. 15 W 23 chains and 14 links to the corner marked N. Thence S 70 W 37 chains and 70 links to the corner marked O. Thence S 80 E. 33 chains and 25 links to the corner marked P. Thence S. 80 W. 55 chains and 25 links to the corner marked Q. Thence East 49 chains and 27 links to the corner marked R. on the right bank of the Mississippi River. Thence up with the Mississippi River to the place of beginning Examined and approved this 8th day of December 1840

William Milburn Surveyor of the Lands of the United States in Illinois and Missouri

Office of the Surveyor General for Illinois & Missouri St Louis July 5, 1863

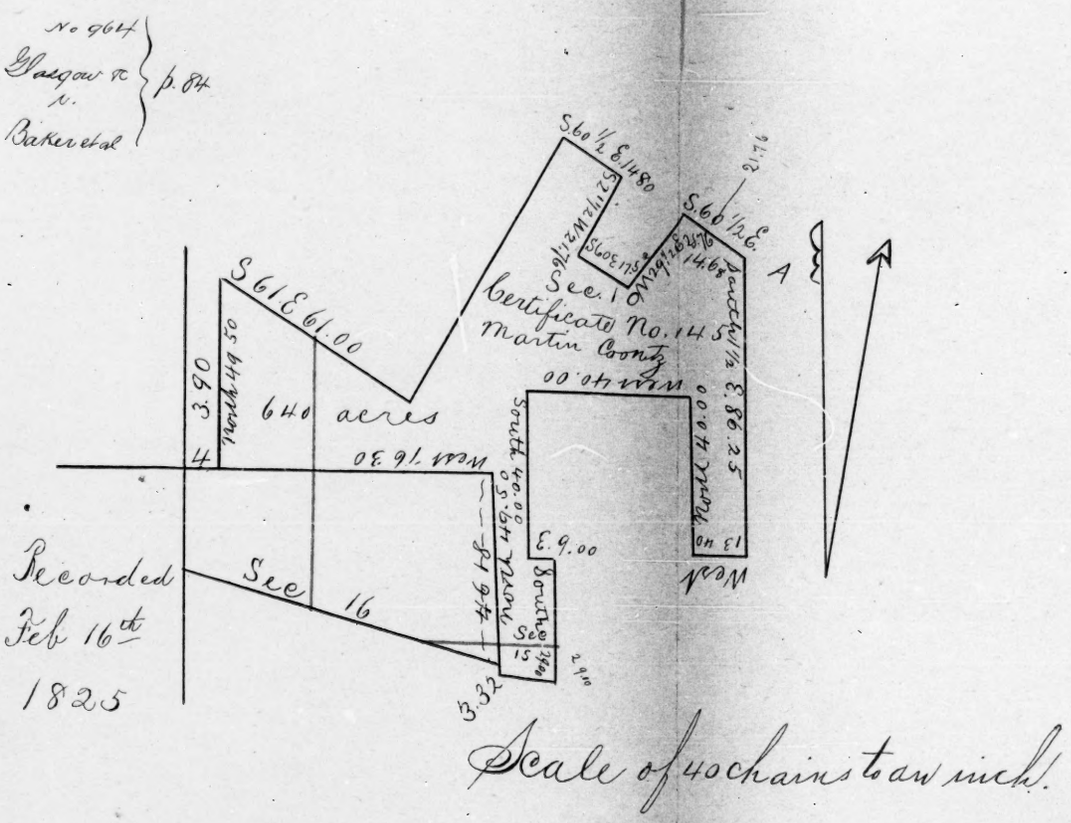
I hereby certify that the above is a full true and complete copy of the whole and every part of the Caption plat description and field notes of the line of boundary line of the Town now City of St Louis in the Territory now State of Missouri as the same is on file in this office

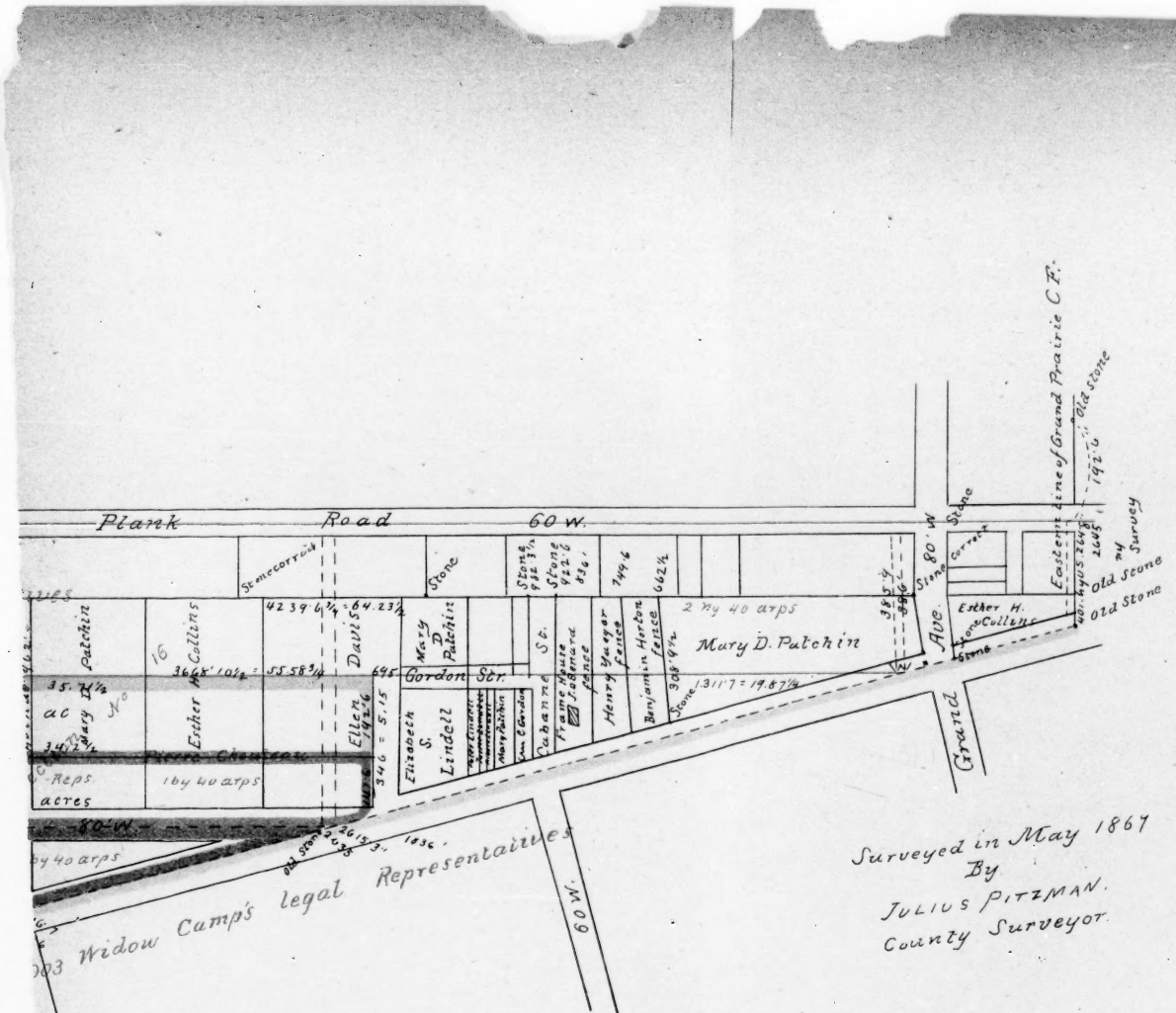
This map is designated X

Signed Wm Cudeby
Surveyor General

Returned

No 9614
Glasgow &c
v.
Bakeretal
p. 84



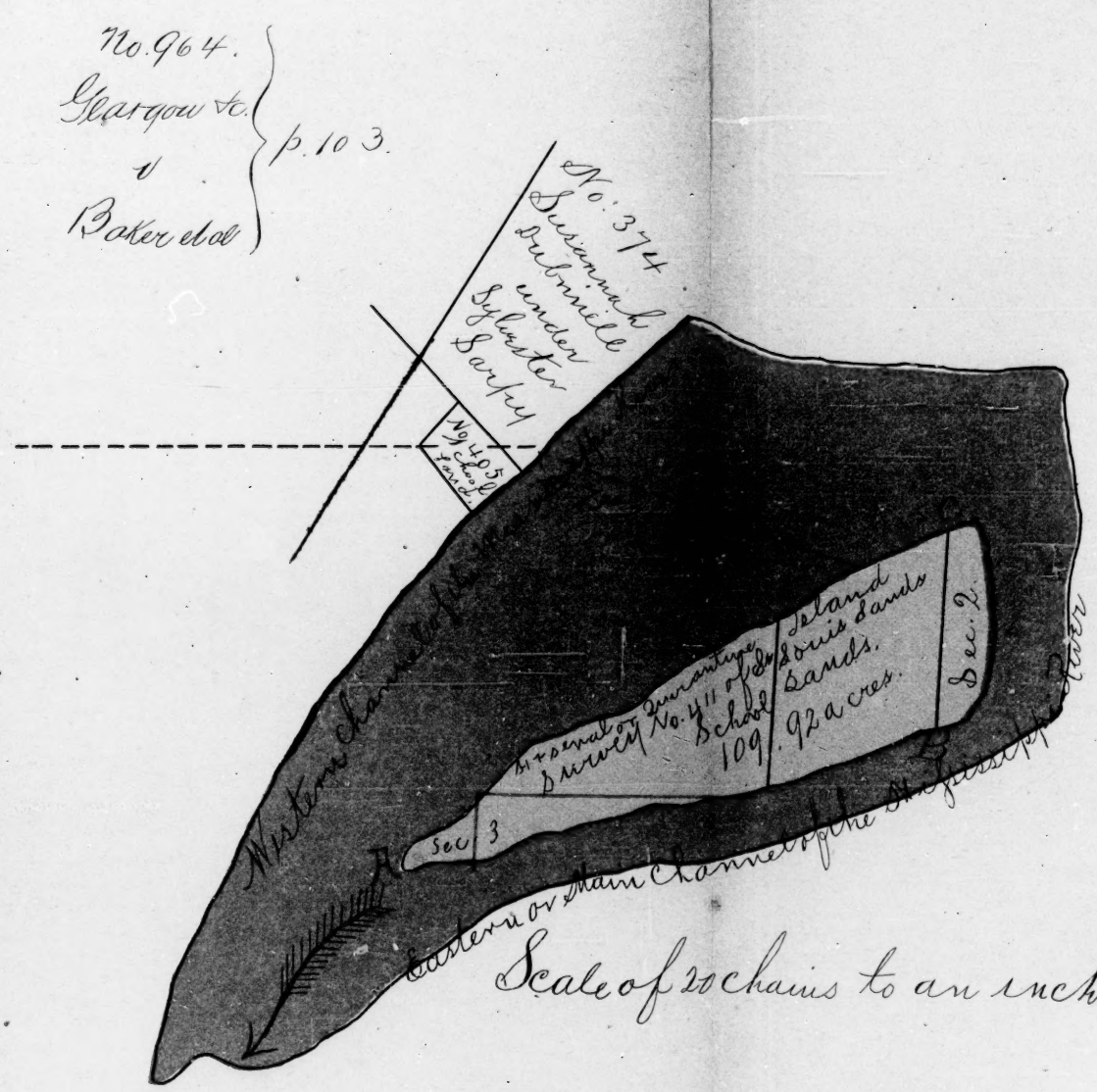


No. 964.
Glasgow vs. } p. 96.
v.
Bakerfield

County Surveyors
Seal
Stamped

No. 964.
Glasgow &c.
v
Baker et al

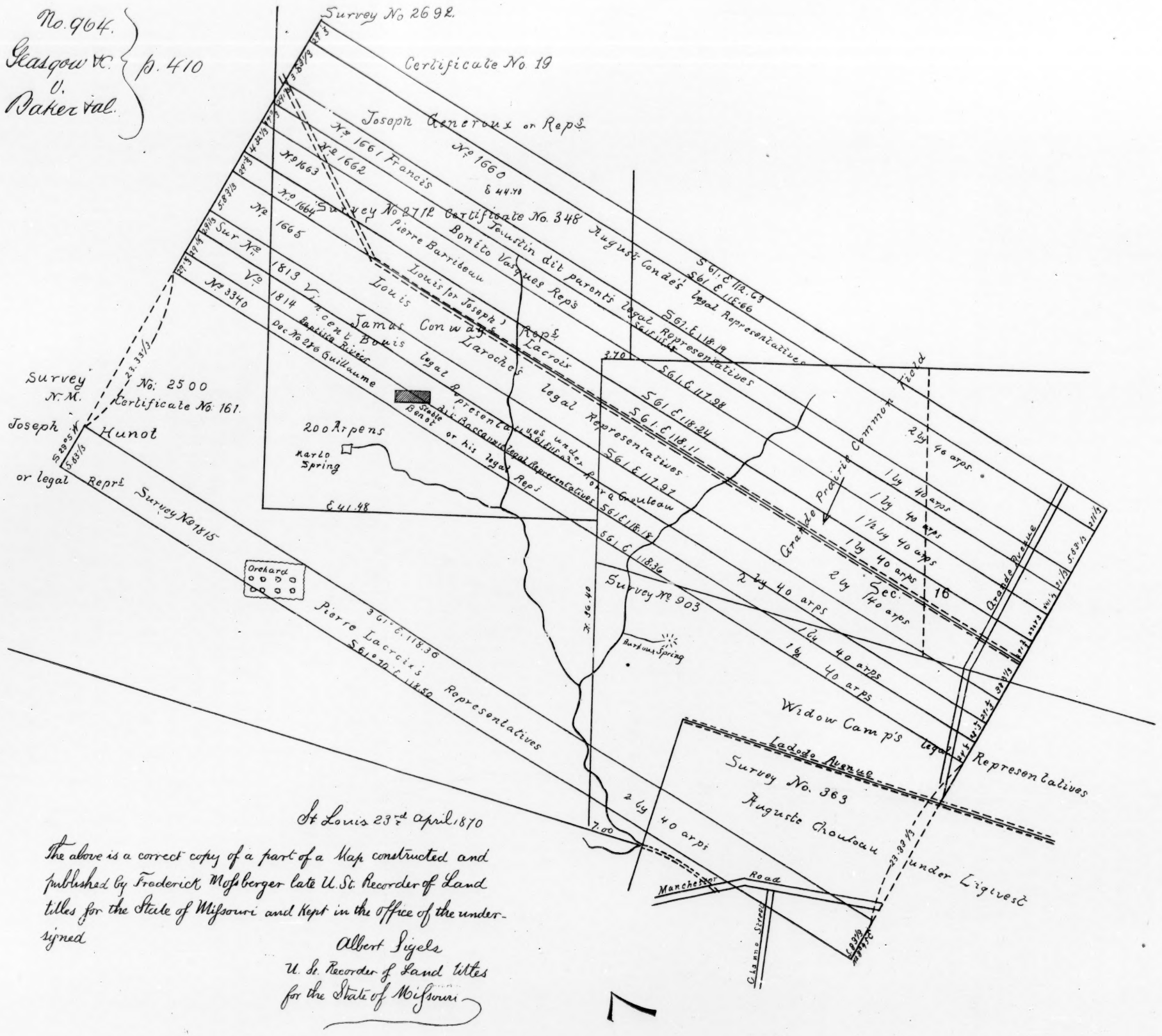
} p. 103.



Scale of 20 chains to an inch.

Township 45 North of the baseline Range 7 East of the 5th pl. M.

No. 964.
Glasgow V.
U.
Baker et al.
} p. 410



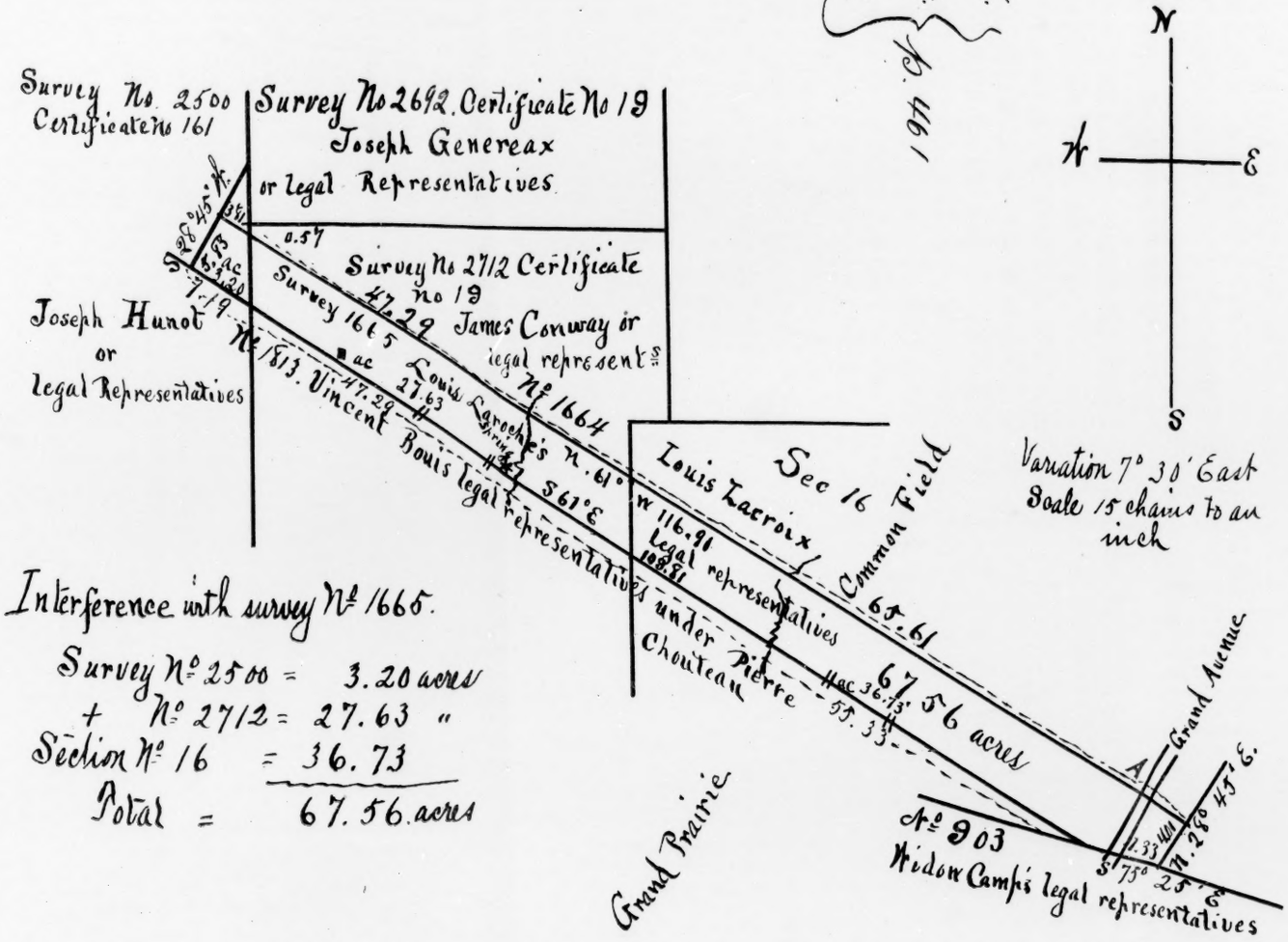
St Louis 23rd April 1870

The above is a correct copy of a part of a Map constructed and published by Frederick Mofsberger late U. St. Recorder of Land titles for the State of Missouri and Kept in the Office of the undersigned

Albert Sigels
U. St. Recorder of Land titles
for the State of Missouri

461

No. 964.
Gladman &c.
v.
Patterson.
No. 461

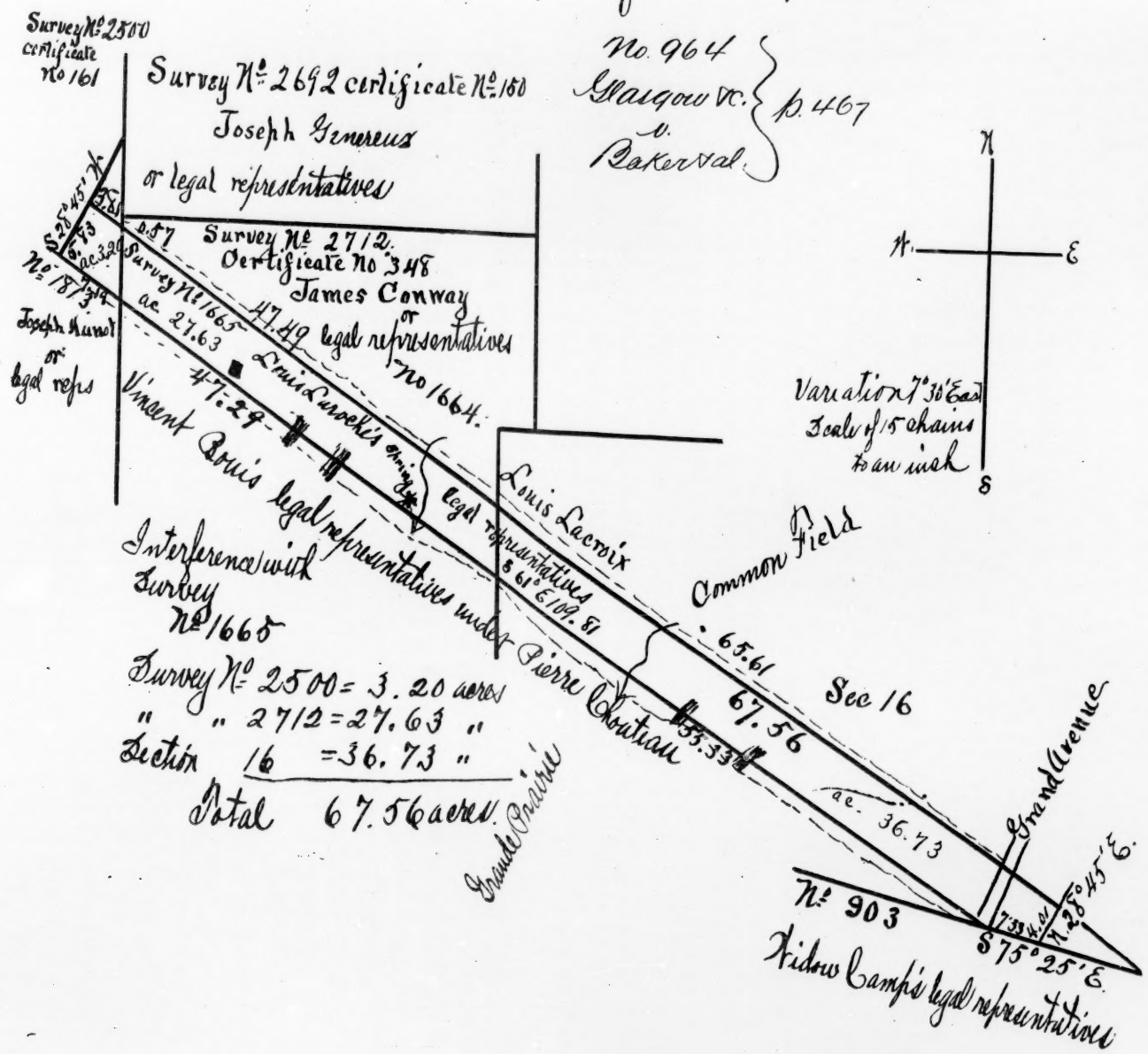


Interference with survey Nº 1665.

Survey Nº 2500 = 3.20 acres
+ Nº 2712 = 27.63 "
Section Nº 16 = 36.73
Total = 67.56 acres

Plan of the N.E. ¼ of Sec. 16

T. 45 N. R. 7 E of the 5th pl Mn.



Boundary line as Required to be run by the Act of 1812.

True Out Boundary Line of the Town of St. Louis in 1812 as shown in the Map printed in Vol. 3 Rec. Page 33.

Pratrie des Noyer Common Field

Cul de Sac

Grand Prairie Common Field

THIS DOTTED LINE SHOWS WHERE THE 16th SECTION WOULD BE

Wm. Gamble Lot

Sur 665 Louis Labeaux

Sur 666 Louis Labeaux

Saint Louis Commons

TOWN OF ST. LOUIS AS IT STOOD INCORPORATED IN 1812

Little Prairie Common Field

Out Lots.

Antient Claim Located Lot

St Louis Common Field

Original Site of Town of St. Louis

Out Lots

MISSISSIPPI RIVER

W. S. N. E.